

APR 29 2008

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

LAKSHMI NADGIR,

Defendant - Appellant.

No. 06-50695

D.C. No. CR-03-00801-JSL

MEMORANDUM^{*}

Appeal from the United States District Court
for the Central District of California
J. Spencer Letts, District Judge, Presiding

Submitted April 22, 2008^{**}

Before: GRABER, FISHER, and BERZON, Circuit Judges.

Lakshmi Nadgir appeals from the 63-month sentence imposed following her guilty-plea conviction for health care fraud, in violation of 18 U.S.C. § 1347. We have jurisdiction pursuant to 28 U.S.C. § 1291, and we affirm.

^{*} This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

^{**} The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Nadgir contends that the district court violated *United States v. Booker*, 543 U.S. 220 (2005), and *Cunningham v. California*, 127 S. Ct. 856 (2007), by enhancing her Guidelines offense level pursuant to U.S.S.G. § 3B1.1 based on facts that had neither been admitted by her, nor proved to a jury beyond a reasonable doubt. This contention fails because the role enhancement did not result in a sentence above the maximum sentence allowed by the statute of conviction. *See United States v. Fifield*, 432 F.3d 1056, 1066 (9th Cir. 2005).

Nadgir also contends that the district court erred in finding facts relevant to the role enhancement by depending on unreliable evidence and by failing to apply a higher standard of proof. We conclude that the district court was not required to apply a higher standard of proof. *See United States v. Riley*, 335 F.3d 919, 927 (9th Cir. 2003). Moreover, because Nadgir admitted the facts used to enhance her offense level, the evidence was reliable. *See United States v. Marin-Cuevas*, 147 F.3d 889, 895 (9th Cir. 1998).

AFFIRMED.